

The circumstances of this case, coupled with the fact of the actual surrender to, and cancellation of, the mortgage by the mortgagor, fail to show such a consummate and binding agreement for a mortgage, as a court of equity would enforce, as against creditors and purchasers.

Courts of equity have properly required, that every agreement shall be clearly and explicitly established before they will lend their aid to enforce it.

The doctrine of postponing registered to unregistered conveyances, upon the ground of notice, has been so qualified as only to apply to cases where the notice is so clearly proved as to make it fraudulent in one purchaser to take and register a conveyance in prejudice to the known title of the other.

This qualification would seem to inculcate the doctrine, that the courts should be cautious how they give expansion to the cases in which secret equitable contracts for liens have been set up as against innocent third parties.

The cases in which these secret equities have been set up, were all cases between the party holding the lien and creditors; and, it is believed, no case can be found in which such secret equitable lien has been maintained against a purchaser; and to enforce the agreement in this case would be pushing the case of *Alexander vs. Ghiselen* further than is warranted by any principle clearly decided in it.

As far as the cases have gone in Maryland, it is proper for the security of the rights of property, and to avoid confusion and uncertainty, that the courts should continue to enforce these equitable contracts for mortgages, when clearly proved, as against creditors; but the policy of carrying the doctrine further than it has already been pressed, is doubted.

{The object of the bill in this cause is to obtain as specific execution of a contract for a mortgage, made between John R. Dall, of Washington county, and William Schley, of the city of Baltimore, acting as trustee under the will of the late John McKim, Jr., and the appointment of the Chancellor, for the use of Eliza McKim Duncan, and Ann McKim Handy, married women, in relation to the lands and real estate of the said John R. Dall, for the sum of \$12,000, and to remove the incumbrance of certain judgments at law, both prior and subsequent to such contract; and also to declare, that a mortgage of the said Dall to a certain Gerard Stonebraker, not recorded in season, should be postponed to the said contract of mortgage.

The bill alleges the rights of the female complainants, under the will of their father: the appointment of the said William Schley as the trustee: the fact that said Dall was the security of the said Schley for the due performance of his trust: the receipt by said Schley of large sums of money, as trustee, from